

APPEAL NO. 032775  
FILED DECEMBER 11, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on September 22, 2003. The hearing officer determined that the respondent (claimant) sustained a compensable repetitive trauma injury; that the date of injury is \_\_\_\_\_; that the appellant (carrier) is not relieved from liability under Section 409.002 because the claimant timely notified his employer of the claimed injury pursuant to Section 409.001; and that the carrier is not relieved from liability under Section 409.004 because the claimant timely filed an Employee's Notice of Injury or Occupational Disease and Claim for Compensation (TWCC-41) with the Texas Workers' Compensation Commission (Commission) under Section 409.003. The carrier appealed all of the above determinations on sufficiency of the evidence grounds. The claimant filed an untimely response and it will not be considered.

DECISION

Affirmed as reformed.

The carrier correctly points out that Finding of Fact Nos. 1, 2, and 3 reference a date of injury of March 18, 2003, whereas Finding of Fact No. 4, Conclusion of Law No. 4, and the actual Decision indicate the date of injury is \_\_\_\_\_. Upon reviewing the decision and order and the record from the CCH, we conclude that the hearing officer determined that the claimant's date of injury is \_\_\_\_\_. The references to March 18, 2003, in Finding of Fact Nos. 2 and 3 were mere typographical errors. We hereby reform Finding of Fact Nos. 2 and 3 to read \_\_\_\_\_, instead of March 18, 2003. Finding of Fact 1 indicates a date that the parties stipulated to prior to the resolution of the dispute over the date of injury. Because the carrier has not asserted that the claimant was not employed by the employer on \_\_\_\_\_, or that it did not provide coverage on that date, the reference to March 18, 2003, as stipulated by the parties at the CCH, is irrelevant to the resolution of this matter. We perceive no error.

The hearing officer did not err in his determinations on the issues of repetitive trauma injury, date of injury, timely notice of injury, and timely filing of the claim with the Commission. Section 401.011(34) provides that an occupational disease includes a repetitive trauma injury, which is defined in Section 401.011(36). Section 408.007 provides that the date of injury for an occupational disease is the date on which the employee knew or should have known that the disease may be related to the employment. Section 409.001(a) provides that, if the injury is an occupational disease, an employee or a person acting on the employee's behalf shall notify the employer of the employee of an injury not later than the 30th day after the date on which the employee knew or should have known that the injury may be related to the employment. Section 409.003 requires that a claimant file a claim for compensation with the

Commission not later than one year after the date of injury. Conflicting evidence was presented on the issues of repetitive trauma injury, date of injury, timely notice to the employer, and timely filing of the claim. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established from the evidence presented. We conclude that the hearing officer's determinations on the issues of repetitive trauma injury, date of injury, timely notice to the employer, and timely filing of the claim are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W. 2d 175 (Tex. 1986).

The hearing officer's decision and order is affirmed as herein reformed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS, SUITE 750, COMMODORE 1  
AUSTIN, TEXAS 78701.**

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Robert W. Potts  
Appeals Judge